

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROGER W. HAIRSTON,

Petitioner,

VS.

ARNOLD SCHWARZENEGGER and
A. P. KANE, Warden,

Respondent.

No. C 06-1517 JSW (PR)

ORDER TO SHOW CAUSE

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at San Quentin State Prison in San Quentin, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision of the Governor of California, who on March 15, 2005 reversed the earlier determination of the Board of Prison Terms, finding Petitioner suitable for parole.¹ Petitioner has paid the filing fee. This order

¹The rules governing relief under 28 U.S.C. § 2254 require a person in custody pursuant to the judgment of a state court to name the "state officer having custody" of him as the respondent. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (quoting Rule 2(a) of the Rules Governing Habeas Corpus Cases Under Section § 2254). This person typically is the warden of the facility in which the petitioner is incarcerated. *See Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction, *see id.* Because Petitioner failed to name the warden of the facility in which he is incarcerated, the court has joined Petitioner's custodian *sua sponte* pursuant to Federal Rule of Civil Procedure 19(a), *see Silveyra v. Moschorak*, 989 F.2d 1012, 1015 n.3 (9th Cir. 1993) (citing *CP Nat'l Corp. v. Bonneville Power Admin.*, 928 F.2d 905, 912 (9th Cir. 1991)).

1 directs Respondent to show cause why the petition should not be granted.

2 **BACKGROUND**

3 According to the petition, Petitioner was convicted of murder in Los Angeles
4 County Superior Court in 1986 and was sentenced to 17 years-to-life in state prison. In
5 this habeas action, Petitioner does not challenge his conviction, but instead challenges
6 the execution of his sentence. Petitioner contends that the denial of parole by the
7 Governor of California during parole suitability proceedings in 2004-05 violated his right
8 to due process. He alleges that he has exhausted state judicial remedies as to all of the
9 claims raised in his federal petition.

10 **DISCUSSION**

11 **I Standard of Review**

12 This court may entertain a petition for a writ of habeas corpus “in behalf of a
13 person in custody pursuant to the judgment of a State court only on the ground that he is
14 in custody in violation of the Constitution or laws or treaties of the United States.” 28
15 U.S.C. § 2254(a).

16 It shall “award the writ or issue an order directing the respondent to show cause
17 why the writ should not be granted, unless it appears from the application that the
18 applicant or person detained is not entitled thereto.” *Id.* § 2243.

19 **II Legal Claims**

20 Petitioner alleges that his constitutional rights were violated by the Governor’s
21 parole denial in 2005. Liberally construed, the allegations are sufficient to warrant a
22 response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369 (1987); *see,*
23 *e.g., Morales. v. California Dep’t of Corrections*, 16 F.3d 1001, 1005 (9th Cir. 1994),
24 *rev’d on other grounds*, 514 U.S. 499 (1995).

25 **CONCLUSION**

26 For the foregoing reasons and for good cause shown,

27 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
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1 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General
2 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

3 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
4 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
5 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
6 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
7 portions of the state record that have been transcribed previously and that are relevant to a
8 determination of the issues presented by the petition. If Petitioner wishes to respond to
9 the answer, he shall do so by filing a traverse with the Court and serving it on Respondent
10 within **thirty (30)** days of his receipt of the answer.

11 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
12 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
13 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
14 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
15 days of receipt of the motion, and Respondent shall file with the Court and serve on
16 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

17 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
18 the Court informed of any change of address by filing a separate paper captioned "Notice
19 of Change of Address." He must comply with the Court's orders in a timely fashion.
20 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
21 to Federal Rule of Civil Procedure 41(b)

22 IT IS SO ORDERED.

23
24 DATED: July 14, 2006



25 JEFFREY S. WHITE
26 United States District Judge
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